

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

LISHU YIN :
 :
 vs. :
 :
 COLUMBIA INTERNATIONAL :
 UNIVERSITY : 3:15 CV 3656

Motion hearing in the above-captioned matter held on
Thursday, July 19, 2018, commencing at 10:01 a.m., before
the Honorable Paige J. Gossett, in the United States
Courthouse, 901 Richland Street, Columbia, South Carolina,
29201.

APPEARANCES:

LISHU YIN, 128 Setlers Bend Court,
Lexington, SC, appeared pro se.

DANIEL H. BLOMBERG, ESQ., 1124 Park West Blvd.,
MT. PLEASANT, SC, appeared for defendant.

REGINALD W. BELCHER, ESQ., P.O. Box 1473,
Columbia, SC, appeared for defendant.

RECORDED BY KURT MCKAUGHAN, ESR
TRANSCRIBED BY DEBRA L. POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402

1 THE COURT: Good morning, everyone. This is the
2 matter of Lishu Yin versus Columbia International University.
3 This is Civil Action No. 3:15-3656. We are here for oral
4 argument on cross-motions for summary judgment. Those are ECF
5 numbers 144 and 159.

6 At this time I'll ask the parties or counsel to make
7 introductions for the record. For the plaintiff, Dr. Yin?

8 DR. YIN: Hi.

9 THE COURT: Good morning.

10 DR. YIN: Good morning.

11 THE COURT: You are Lishu Yin, correct?

12 DR. YIN: Yes, I am Lishu Yin. Thank you.

13 THE COURT: And you're the plaintiff and you're
14 representing yourself.

15 DR. YIN: Yes.

16 THE COURT: All right, thank you. And for the
17 defendant?

18 MR. BELCHER: Reginald Belcher with Turner Padget
19 here in Columbia, and with me is Daniel Blomberg from the
20 Becket Fund for Religious Liberty.

21 THE COURT: Thank you. Good morning. Before we
22 begin, I just want to make sure, I know we have a lot of
23 people in the gallery today, and of course you are welcome,
24 federal courts are open to the public and we're happy to have
25 you. I just want to make sure everybody understands that this

1 is an oral argument hearing on legal motions, cross-motions
2 for summary judgment, and is not an evidence hearing or a
3 trial, so there won't be any evidence or testimony taken
4 today. This is strictly an oral argument on a legal issue
5 raised by these cross-motions for summary judgment.

6 And I'm going to hear, to start, since they are
7 cross-motions, both the plaintiff and defendant have filed
8 them, I'm going to start with the defendant. And I believe
9 the notice of hearing allotted 20 minutes to each party. So,
10 Mr. Belcher or Mr. Blomberg, I'll be happy to hear from either
11 of you at this time.

12 MR. BELCHER: Judge, on behalf of CIU, Mr. Blomberg
13 would present the arguments today. He's argued in Federal
14 Court around the country on religious liberty issues,
15 including the ministerial exception.

16 THE COURT: All right. Mr. Blomberg?

17 MR. BLOMBERG: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. BLOMBERG: My name is Daniel Blomberg, I am
20 counsel for Columbia International University, the defendant
21 in this action.

22 As the Court has already noted, we're here on
23 cross-motions for summary judgment concerning the application
24 of a ministerial exception to the decision by Columbia
25 International University to terminate Dr. Yin's employment.

1 The ministerial exception is a fundamental First Amendment
2 right that, under the religion clauses, prevents government
3 entities from being involved in the free choice of religious
4 organizations to select their ministerial staff. And also
5 under the Establishment Clause, prevents entanglement by the
6 government in those decisions. So it's both the Free Exercise
7 Clause and the Establishment Clause both have a part to play
8 in protecting the free choice of a religious organization
9 selecting their ministers.

10 The right was recognized in 1972 by the Fifth Circuit in
11 the McClure case, it's been recognized in the Fourth Circuit
12 since 1985 under the Rayburn decision and repeated decisions
13 after that. And it was recognized unanimously by the United
14 States Supreme Court in the 2012 decision Hosanna-Tabor.

15 In a normal ministerial exception case you have up to
16 three issues. The first issue is whether or not we're dealing
17 with a religious ministry, the second issue is whether we're
18 dealing with a religious minister, and the third is whether or
19 not the government action involved here would interfere with
20 the religious organization's relationship with their minister.

21 Here, the third issue is not on the table. The District
22 Court at docket 116 has already recognized the two remaining
23 claims before this Court, the Title VII claim and the Equal
24 Pay Act claim, who are both foreclosed under the ministerial
25 exception doctrine. And the Fourth Circuit recognized that in

1 the Hebrew Home case, and of course the Hosanna-Tabor decision
2 was dealt with in the -- explicitly addressed Title VII and
3 foreclosed Title VII. The Hebrew Home case dealt with the
4 Fair Labor Standards Act, under which the EPA falls. And then
5 also the Roman Catholic Diocese of Tulsa specifically
6 addressed EPA specifically.

7 And so the real issues before this Court are whether or
8 not CIU is a religious ministry, and second, whether or not
9 Dr. Yin was a religious minister.

10 So taking those in that order, first, CIU clearly is a
11 religious ministry under the test announced in Hebrew Home,
12 which is at 363 F.3d 310. And the test there is whenever an
13 organization is marked by clear or obvious religious
14 characteristics, then that is a religious organization for
15 purposes of the First Amendment.

16 And here, they couldn't be clearer that CIU is a religious
17 organization. For 95 years it has operated as a Christian
18 nonprofit ministry. It provides both a biblically-based
19 education on a variety of different subject matter, and it
20 provides spiritual formation training. In fact, that the
21 student handbook at docket 160, paragraph five, emphasizes
22 that spiritual formation is the essence of the training that
23 is received at CIU. And so it is a devotional ministry. The
24 goal is not just to train someone to be able to speak about
25 Christian matters, but also to live their life in a way that

1 reflects a sincere and genuine faith.

2 Every employment application at CIU states that CIU is a
3 Christian ministry dedicated to theological training and to
4 propagating biblical Christianity, and that its goal is to
5 help God's people grow in spiritual maturity, Bible knowledge
6 and ministry skills. And that's at docket 162-11, page four.

7 So Dr. Yin, to her credit, does not strongly contest the
8 spiritual religious nature of CIU's status. And I think
9 she -- several times she acknowledges that CIU is a Christian
10 organization that has a Christian mission.

11 THE COURT: Mr. Blomberg, let me jump in and ask you,
12 is it fair to characterize CIU as a seminary, under the
13 general understanding of that word?

14 MR. BLOMBERG: So, Your Honor, I think that -- It
15 certainly has a seminary. Part of the ministry is -- part of
16 the organization is a theological school and seminary.

17 And then as compared to, say, some historically religious
18 colleges which teach solely subject matters apart from their
19 religious studies, right, so you do have some of those who may
20 be founded on religious bases, but it doesn't really influence
21 the way that the organization currently operates. That's not
22 true for CIU. CIU requires every undergraduate student to
23 take 30 credit hours of theological classes.

24 So I think as in -- not -- maybe not technically, but in
25 common parlance it would be considered a seminary-like school.

1 THE COURT: And you're comparing that maybe to,
2 say -- and I don't know a lot about Georgetown University, so
3 I probably shouldn't pick on them as a comparison -- but where
4 there may be -- I mean, it's a religious school, it has a
5 religious element to it, but not every student there is
6 necessarily trained in theology or religious subjects.

7 MR. BLOMBERG: That's right. And a lot of religious
8 schools, genuinely religious schools, don't have this level of
9 emphasis on religious matters as does CIU.

10 But CIU sees itself as primarily focused on training
11 people for the ministry. That's what their job is. Other
12 religious schools don't necessarily have that kind of focus.
13 And that's one of the reasons why CIU only accepts students
14 and faculty who share their faith. Because it doesn't make
15 sense to train, you know, a Buddhist to do Christian ministry,
16 because they don't share a Christian faith. Right?

17 And so, again, Dr. Yin, I think correctly, acknowledges
18 CIU's Christian ministry status. Her two counter arguments on
19 this issue are that CIU has an equal opportunity policy and
20 has received public -- some federal funding like Title VI Pell
21 grants or Title IV Pell grants. That issue has been squarely
22 addressed by both the Petruska case out of the Third Circuit
23 in 2006, and then in the -- recently in the Grussgott case in
24 the Seventh Circuit, and this in 2018 -- sorry, 2017 -- where
25 the Court recognized that those issues -- you can't waive your

1 ministerial status, basically. And of course it would be a
2 very broad-reaching ruling for this Court to find otherwise,
3 because there are over 100 seminaries of Catholic, Jewish and
4 Protestant backgrounds that also receive these kinds of
5 funding. So no court has ever found that, and I think several
6 courts have directly rejected it.

7 So I think pretty clearly the question, the first
8 question, that CIU is a religious organization, is addressed
9 on the record, the complete report from this Court. The other
10 issue that makes that an important finding is the Penn case,
11 2018 Penn case out of the Second Circuit, which we cite in our
12 briefing, specifically notes that the stronger the religious
13 status of the organization, in some ways the more it goes to
14 show the religious function of the individual. Right? When
15 you have a religious organization that is wholly religious,
16 then it's clearer that in an individual holds a religious
17 function. And that's the next part of the analysis I'd like
18 to take the Court to, and that is whether or not Dr. Yin
19 served in a ministerial capacity at CIU.

20 Now, the rule here, which is set by the Rayburn case, is
21 that the Court's analysis turns primarily on the function of
22 the individual's position, what they did for the ministry.

23 And so the types of things that courts look to are whether
24 or not the individual taught or spread the faith or
25 participated in a religious ritual worship.

1 And in the Hosanna-Tabor decision, Justice Alito and Kagan
2 expressly said this means the exception applies to, quote,
3 "...any employee who serves as a messenger or teacher of a
4 religious group's faith."

5 So unsurprisingly then, courts have repeatedly found that
6 teachers at religious schools have a special religious status
7 and consistently have been found to be -- hold a ministerial
8 status.

9 THE COURT: But not exclusively; aren't there other
10 occasions where courts have found teachers in a religious
11 school not to be ministers within the meaning of the
12 ministerial exception?

13 MR. BLOMBERG: Absolutely, Your Honor, it's not a
14 categorical rule, it's more likely than not. So you see this
15 in the Fourth Circuit's Diocese of Raleigh case which was
16 quoting the NLRB case from the Supreme Court, where it says,
17 "Religious teachers at religious schools hold a critical and
18 unique role." So it doesn't mean that they're going to
19 necessarily be able to minister, but it means it's more likely
20 than not. It's more likely than perhaps another type of
21 position, precisely because they are teaching and spreading
22 the faith in that position. And so you've seen this apply to
23 preschool teaches in the Grussgott case, elementary teachers
24 in the Hosanna-Tabor case, elementary school principals in the
25 Fratello decision, even part-time music teachers in the

1 Diocese of Raleigh case.

2 And our position, Your Honor, I think one way of framing
3 this is that if, as in Hosanna-Tabor, a fourth grade
4 elementary school teacher who teaches religious believers
5 about the faith is a minister, then we think it stands to
6 reason that a graduate school professor who directed a program
7 on religious matters and who teaches -- and this is the
8 crucial part -- that teaches not just a generation of
9 believers, but a generation of leaders and ministers about the
10 faith, that in that context we think it makes for a very
11 strong case for ministerial function.

12 And we've identified six considerations in the briefing
13 before this court that show that Dr. Yin performed, and
14 admirably performed, a ministerial function for CIU.

15 We think the first and most important of those is the one
16 the Rayburn case identifies, and that is the essential job
17 functions that she was hired to perform and that she did
18 perform, the second is that she held a distinct religious
19 role, the third is that she led and participated in religious
20 observances such as prayer and chapel, the fourth is that she
21 had religious background, experience and training that were
22 important to her religious work, and part of the reason why
23 CIU hired her to do the work that she did. The fifth is that
24 she was required to agree with CIU's faith, and the sixth is
25 that she modeled CIU's faith, and again, did so admirably,

1 consistently got recommendations and statements from students
2 that she did an excellent job (inaudible) the faith, and
3 showing a real heart for the ministry and heart for the
4 students she was serving.

5 So taking the first one first, the essential job functions
6 that Dr. Yin had at CIU included teaching and spreading the
7 faith, which is exactly what Rayburn says is the kind of the
8 defining characteristics of a minister. And Dr. Yin, again,
9 acknowledged this at her deposition, that her work helped
10 further, quote, "advancing God's kingdom," end quote, and,
11 quote, "spreading Christianity," end quote. And that's at
12 docket 163, page 41.

13 And she was right. Dr. Yin was hired to participate in
14 and then ultimately in 2011, lead part of CIU's ESL program,
15 which is a program of teaching English as a second language
16 program. That was a program that had a very important
17 ministerial function. The reason why CIU started it was
18 because it allowed them to spread the faith in places that
19 were harder to reach if you wearing, say, a Roman collar, not
20 that CIU graduates would be wearing a Roman collar, but you
21 get my point, that a formal minister wouldn't be able to reach
22 those populations in the same way that someone who is coming
23 in as an English teacher would be able to.

24 And, in fact, skipping ahead a little bit, this was
25 precisely one of the reasons why CIU hired Dr. Yin, because

1 her own conversion to the faith resulted from the work of an
2 ESL teacher in China, and then she was motivated and she came
3 to CIU and said I had this experience, and I want to help
4 bring this experience here. And CIU was very excited about
5 that, because in a lot of ways it puts skin on what they were
6 trying to do with the program, and that was help prepare
7 people so they could spread the faith in places that would
8 otherwise have difficulty receiving it.

9 Each of the formal job documents that spelled out the
10 essential job functions, the contract, the job description,
11 the application, the faculty handbook, the engagement letter,
12 and all the evaluations that were performed, including her
13 own, also go through and very clearly identify the religious
14 functions that were inherent in the position.

15 So starting with the contract at docket 159-11, the
16 contract said, "It is important for the faculty to provide
17 religious leadership for students by instruction and example."
18 So she was being hired to perform a religious leadership role,
19 which is a quintessential ministerial function. And CIU was
20 also clear that her agreement to follow their religious
21 beliefs and religious lifestyle were essential job functions,
22 they were bona fide occupational qualifications. If she
23 didn't share the faith and she didn't live the faith, then she
24 couldn't do the work that CIU needed her to do in that
25 position.

1 The contract also reserves a right under federal law to
2 make employment decisions on those religious criteria, which
3 of course for a secular employer would be impermissible.

4 The job description also is very clear about this, docket
5 162-16, where it said part of a job was enabling student
6 growth in biblical knowledge, spiritual maturity and ministry
7 orientation. The first specific requirement was that she
8 would model Christ-like living and service. And one of the
9 job skills required was that she would foster students'
10 spiritual growth and ministry skills. The application also
11 was very clear on this issue. The application that she filled
12 out, and also had recommendations received from, at docket
13 162-13, the very first page of the application again repeated
14 that CIU is a Christian ministry dedicated to theological
15 training and spreading faith, propagating Christianity.

16 And the reference document, the document that was given to
17 the religious reference, and Professor Yin, Dr. Yin provided
18 four pastoral references, asked if the individual would be a
19 good fit for a ministry, quote, "devoted primarily to the
20 training of full-time vocational Christian workers." So
21 they're asking her, can she come in and help train ministers
22 to do ministry? And she got a glowing review, because again,
23 she has a strong faith, as evidenced in the record. The
24 faculty handbook also showed this. At docket 161-1, page 40,
25 the Educational Philosophy and Responsibilities Guide said,

1 quote, "The teacher should accept the faculty role as a
2 ministry in the biblical sense, and never consider it just to
3 be a mere job."

4 And it goes on to say that the faculty should employ
5 prayer as a basic professional tool. Again, these aren't the
6 things that you would ask of a math teacher at a secular
7 institution. These are the requirements at CIU because of the
8 religious mission, because of the religious role that
9 Professor Yin or Dr. Yin held.

10 Also the engagement letter. So when CIU hired her, they
11 gave her the engagement letter that said, docket 159-9, it
12 says, "I am very grateful that God has led you to join the
13 team here at CIU, and pray that your ministry among us will be
14 long, fruitful and strategic." And specifically says what
15 she's being hired to do is invest her life in training men and
16 women to the task of world evangelism. Again, spreading the
17 faith. This is what the Rayburn test is all about.

18 And the Bell case that the Fourth Circuit decided in 1997
19 at 126 F.3d at 332, specifically identifies an engagement
20 letter that highlights the ministerial status as evidence of
21 that status.

22 And so then you also see it in the -- in each of the
23 evaluations that are performed, the evaluations from her
24 supervisors, the evaluations that Dr. Yin performed for
25 herself, and also the evaluations from her students, again

1 reaffirming the core religious function that Dr. Yin admirably
2 performed for CIU.

3 At docket 162-17, the 2008-2009 supervisor evaluation
4 evaluated her -- this is one of her essential job functions --
5 on whether or not she integrates Christian perspective and
6 biblical material into courses and enables students to have a
7 Christian viewpoint to their profession. And the supervisor
8 evaluated her as exemplified her ability to present material
9 from a biblical perspective.

10 And then also was evaluated on whether or not she modeled
11 Christ-like living and ministry, and was evaluated very very
12 positively on doing that job very well. In her
13 self-evaluation from 2011-2012, docket 159-14, at page three,
14 Dr. Yin identified a number of religious functions that she
15 performed that semester. She met with each student and prayed
16 for them specifically. She incorporated CIU's goals, its
17 religious ministerial goals, quote, "into every class."

18 She encouraged students to follow the Lord's calling and
19 to live out the faith. She formed prayer groups for the
20 students from day one of the classes, and required the
21 students to attend those prayer groups at least seven times a
22 semester, and also for at least an hour each time. And she
23 set an example. She said, "I set an example to demonstrate
24 Christian disposition," and she was fostering every student to
25 grow spiritually.

1 So again, these are strong indications of the religious
2 ministerial role that she held.

3 The student evaluations that are in the record as well,
4 docket 160, paragraph 58, said most of the students in her
5 class came to her for some form of ministerial training.
6 Their ultimate objective in coming to CIU and getting the
7 degree they were getting and participating in the program and
8 then graduating, was to have some formal ministerial training.
9 About 80 percent, 79 percent said that's why they were in her
10 class. And the evaluation rated her positively on covering
11 matters such as world evangelization, spiritual formation.

12 So those are just the formal documents, Your Honor, that
13 are before this Court, the contract, the engagement letter,
14 all those kind of documents. But also exists in the
15 substantive record of what Dr. Yin actually did. She admits
16 and she acknowledges in her response brief at pages 19, 24 and
17 28, that she taught a, quote, "biblical world view," and that
18 she was required to do so. That if she hadn't done so, CIU
19 would have either given her a poor review or perhaps even
20 terminated her for that reason, which of course it did not, it
21 did not terminate her for that reason. In fact, she did do an
22 excellent job providing a world biblical view in her classes.

23 And again, as I mentioned earlier, she said at docket
24 159-14, that she did this in every class.

25 Now, she also designed a flier for her program, the M.A.

1 TESOL program that she led, docket 162-15, stating that
2 graduates of her program would have, quote, "ministry
3 opportunities which would include, quote, 'the ability to use
4 English teaching as ministry.'"

5 And then, as the CIU's briefing shows at pages 13 through
6 14 of the opening brief, all of her curricula identified
7 religious functions and religious participation in the class.
8 I think one of the key examples is the book she assigned to
9 her students to read the, "English Teaching as Christian
10 Mission:" quote, "An Applied Theology." And that's at docket
11 162-8. They were studying this book to understand how they
12 use the training in the classroom to do ministry outside the
13 classroom afterwards.

14 THE COURT: So on that point, is it -- you're saying
15 that Dr. Yin was teaching English, I guess, as a second
16 language to students, so that they could, I guess, go out into
17 the world and communicate in English to spread the message of
18 their faith. Is that fair?

19 MR. BLOMBERG: Yes, Your Honor. And two things about
20 that. So one was teaching them the substantive skill set so
21 they could teach English as a second language, right, which
22 isn't inherently necessarily religious, but the purpose for
23 which she taught it and the purpose for which the students
24 received it was so that they could use that as a way of
25 opening -- I think the term that was used by CIU is a

1 tent-making ministry. So the Apostle Paul, who made tents,
2 but also spread the gospel, uses an opening that allowed him
3 to spread the gospel in that way. And that's in CIU's
4 briefing.

5 And the other thing that Dr. Yin was doing in her classes
6 was also working on the spiritual formation of her students.
7 Because remember, CIU has both components to how they do
8 ministry. One is teaching about the -- the substantive course
9 content, but the other is also training the student to have a
10 strong devotional relationship with the Lord. And so that's
11 one of the reasons why, at the start of every class, Dr. Yin
12 would open the class in prayer. And she instructed the
13 students that they would pray as a part of her program,
14 because, quote, "we believe prayer is vital to ministry."
15 That's docket 163-4.

16 So, Your Honor, we think that on that basis alone, given
17 the very strong record of religious function that Dr. Yin
18 performed for CIU, that this Court can find that Dr. Yin held
19 a ministerial role. But we think it goes further than that.
20 There's five other considerations here. Just to take a couple
21 of them --

22 THE COURT: And you are out of time, so make it
23 really fast.

24 MR. BLOMBERG: Very fast, Your Honor. Very fast,
25 Your Honor. I think she held herself out as having a

1 ministerial role, a role that's distinct from her students,
2 where she said, I am your adviser, I am your program director,
3 I am your official shepherd. That was docket 163-9.

4 She specifically informed students and supporters that
5 they equip students with skills to integrate biblical
6 principles into whatever they taught. And she specifically
7 said that her TESOL program will prepare you, the student, to
8 be a Christian educator.

9 Your Honor, in closing, I just want to emphasize, CIU did
10 not terminate Dr. Yin because of problems with her
11 performance. She was an excellent educator for the school.
12 CIU terminated Dr. Yin's employment because of a financial
13 issue, a financial time that the CIU was going through. There
14 were 28 individuals who were also terminated the exact same
15 time, 50 over the course of that calendar year. And but that
16 doesn't change the fact that the ministerial exception fully
17 applies here. In fact, the Bell case directly addressed this
18 kind of issue where the termination there was expressly and
19 solely the reduction in force, it was solely for financial
20 reasons and not at all for performance reasons. And what the
21 Bell case said, at 126 F.3d page 328, was that was a decision
22 that was protected under the ministerial exception.

23 So, Your Honor, for those reasons we urge the Court to
24 grant summary judgment to CIU.

25 THE COURT: Thank you, Mr. Blomberg.

1 MR. BLOMBERG: Thank you.

2 THE COURT: Dr. Yin?

3 DR. YIN: Your Honor, can I stay here?

4 THE COURT: You may.

5 DR. YIN: Yes, thank you very much, Your Honor, for
6 this hearing opportunity.

7 At this moment I'm not going to counter argument. And I'm
8 going to talk about the policies and the guide, and a little
9 bit background to this case.

10 And about 25 years ago, with my parents' encouragement and
11 support, I came to America to study. The reason my parents
12 supported me was because they did not want me to go through
13 the kind of persecution they went through in China. They
14 hoped the best for their daughter to live in a land that has
15 liberty and justice for all, that has a legal system to
16 protect every individual's rights.

17 And today I'm -- never did they know and never did I know
18 today I'm standing here fighting for justice and seeking
19 justice to be served. Today I'm presenting facts and the
20 truth. I'm not presenting arguments to the Court. And I'm
21 confident truth will come out and prevail.

22 THE COURT: Let me just stop you right there, Dr.
23 Yin, because I want to make sure you understand. You just
24 told me that you want to present facts and not argument, but
25 the purpose of today's hearing is for you to make argument

1 regarding the law and --

2 DR. YIN: Yes, okay.

3 THE COURT: -- why this ministerial exception that is
4 a part of the law, shouldn't apply to you. And I know you're
5 going to need to tell me some facts to explain that, but I
6 want to make sure you understand that today is not a trial.

7 DR. YIN: Okay.

8 THE COURT: It's not an evidentiary hearing, it's not
9 your day to argue that you were unfairly terminated. It's not
10 your trial on the merits. This is simply a hearing on a legal
11 issue. So I'm going to ask you to confine the facts that you
12 want to tell me about to the application of that ministerial
13 exception that is at issue today.

14 DR. YIN: Okay. Thank you, Your Honor. Can I have a
15 little bit more minutes with my 20 minutes?

16 THE COURT: If I stop you and ask you questions,
17 you'll get extra time for that.

18 DR. YIN: Okay. Thank you. Then I'm going to
19 counter argument for what they said the program training
20 minister. And CIU is an accredited institution, it was
21 registered with the Department of Education as a nonprofit or
22 not-for-profit institution, not a proprietary. But, according
23 to their lawyer, in one of the court papers they filed, they
24 also claim CIU is a proprietary interest. I will leave that
25 for the judge and for the judgment of the legal nature of the

1 institution.

2 And CIU also claims it's an institution that has Christian
3 faith. And when we talk about the program, the program I was
4 teaching, they claim that I was an excellent educator, but
5 when I file, and as they laid me off, it's not because of the
6 budget cut, but when I file my complaint, and it was the South
7 Carolina Human Affairs Commission and also EEOC, they claimed
8 that I was the least productive faculty member by
9 fabricating -- by fabricating a faculty productivity
10 measurement that I had never seen. And it never actually
11 existed. They argued I was the least productive faculty
12 member, which has become a performance issue. Just now Mr.
13 Blomberg said it's not the performance issue. And this was
14 documented with the EEOC record.

15 And also, the program is not to train the ministers. And
16 according to CIU's registration with the staff accreditation
17 agency and their report to the inventory programs with the
18 Commission on Higher Education, and that teaching English as a
19 second language, also including -- I'm sorry -- at the end,
20 teaching English as a foreign language registered under the
21 classified instructional classic code as the -- as -- the
22 number is 131401. And this number matches the code for the
23 National Center for the Classified Instructional Programs.

24 And the program's purpose is to -- focuses on the
25 principles and the principles -- the principles and the

1 practices of teaching English to students who are not
2 proficient in English and who do not speak, read or write
3 English, and that that may prepare individuals to function as
4 teachers and administrators in such programs. They reported
5 the program under this CIP code, clearly identified the
6 purpose of this whole program is to train English language
7 teachers. Your Honor, I have my former students sitting here
8 in the audience, and they are the English language teachers,
9 they taught at the EPI with University of South -- USC.

10 And another thing I would like to bring up is the argument
11 is that consistently talking about this religious institution,
12 applying the previous courses, and then to roundly affirm me
13 as a minister. Specifically they use the case of the
14 Hosanna-Tabor. And in this case the nature of the case is
15 different. And in this case the Supreme Court has set several
16 clear guidelines. Number one, the school is constituted as a
17 church. But CIU is not constituted as a church, as clearly
18 defined in this guide book is the Educational Philosophy and
19 Responsibility Guide. And the 2008 for faculty and
20 administrators. And it's not constituted as a church. The
21 language can be located in this very guide, 180-page-long
22 guide.

23 THE COURT: Can you tell me, Dr. Yin, if that is a
24 document that's in this record, it probably has a heading at
25 the top that gives you an ECF number that will tell me where

1 it is in the court record. It's probably at the very top of
2 every page.

3 DR. YIN: Yes, I will. This is actually they gave me
4 during the discovery process.

5 THE COURT: Okay. Is it part of the record --

6 DR. YIN: It's part of the record.

7 THE COURT: -- with regard to these motions, someone
8 has filed this as an attachment? Can you just tell me that
9 ECF number at the top.

10 DR. YIN: I will. I will tell you --

11 THE COURT: I think Mr. Blomberg is going to try to
12 show where you that is, and that will help me find it later
13 after this hearing.

14 MR. BLOMBERG: 159-5.

15 THE COURT: Thank you. 159-5.

16 DR. YIN: There are so many pages. So it's page 92.
17 Page 92. And number two, page 92, said, "While CIU is not
18 constituted as a church." And then in the faculty
19 responsibility, clearly it is stated it is primarily a
20 teaching institution. So there is a major differences in the
21 nature of this two -- the settings of the two cases.

22 And the second one is the teacher in the Hosanna-Tabor
23 case, she took eight courses in theology. I didn't take eight
24 courses. What they kept arguing is my experiences that I
25 attended Oral Roberts University. I got my master's degree in

1 teaching English as a second language from the Oral Roberts
2 University. There are 36 credit hours in that program. And
3 the 32 hours, they're all in education. Two hours is for the
4 physical and for the PE. Two hours, that less than two credit
5 hours for the Holy Spirit in the Now. And that is a class to
6 teach about praying tongue. Praying tongue is not a position
7 that is CIU supported. They kept arguing, using that as a
8 religious training that I had.

9 When I was at the interview, one of the top administrators
10 asking me, do you pray in tongue? So I said, yes, I do, in
11 private. And it end up the administrator told me, I would
12 like you to know that a former faculty member promoting
13 praying tongue, he was fired.

14 And also, another argument about that case is did the
15 teacher pass the oral examination by a faculty committee. In
16 Hosanna-Tabor case, yes, the teacher passed the oral
17 examination. But for me, I never knew an examination existing
18 in my whole life.

19 And another one is did the teacher obtain the endorsement
20 of the local synod district. Yes. In that case. But not in
21 my case. And CIU is governed by its accreditation agency.
22 And it's a secular agency located in Georgia. And this
23 accreditation agency does not offer any endorsement to
24 university faculty members, but they do have the faculty
25 credential requirement.

1 And also, the teacher was commissioned as a minister in
2 that case, but I was never commissioned in this case. Before
3 I was hired, during -- during my employment, and even after I
4 was hired, and nobody ever communicated that the employee
5 needs to perform the ministry role.

6 And before I was hired, I received this letter. It's a
7 recruitment letter from Dr. Uecker, the former dean of the
8 graduate school. This letter Dr. Uecker wrote. Dr. Uecker
9 wrote, "I am so pleased that you are interested in applying
10 for faculty position at Columbia International University."
11 And, "...based on your background and passion, to make this
12 position one that is not TEFL or teacher education only, but
13 rather an appointment to teach in both programs as needed. It
14 is my feeling that should you fill this position, and once we
15 have the funding to add yet another faculty member, that we
16 would move you fully into education and hire another TEFL
17 adult focused person for the TEFL program."

18 So when they hired me, they used my background for K to 12
19 teaching experiences. So the first class I taught was
20 teaching English, the principal strategies for teaching K
21 through 12 English language learners, and it is a course that
22 I developed.

23 And in this very package, Dr. Uecker did not hire me
24 because of my ministry background, and he hired me because of
25 my educational background, my credential and my professional

1 experiences. Here is a whole package, Your Honor. I could
2 give you a copy of this package, and including the courses
3 created by passing down to me in the very program.

4 And another thing in this case I would point out is the
5 teacher in the Hosanna-Tabor case, she claimed that minister
6 tax exemption tax. I never knew of that kind of thing
7 existing; now I know it. I never claimed that tax exemption.

8 And another thing, Your Honor, I would like to point is
9 let's talk about document. When a Judge Childs ordered that
10 both parties enter into the limited discovery process, and it
11 would begin to exchange documents, CIU did not ask me to
12 produce any documents to support their claim. And because
13 under their claim it's just for the convenienceness of the
14 case, and they argue that I was a minister. And instead, they
15 give me a jump drive -- where's my jump drive -- they gave me
16 a jump drive that contained 5339 page numbered documents. It
17 took me hours to download it from the documents. And they
18 gave me all these document dump in this way, and I couldn't
19 even carry it. However, they proved helpful to me, because I
20 discovered the Faculty Guide, Educational Responsibilities
21 and -- Educational Philosophy and Responsibility Guide. In
22 this very guide there is a policy about women in ministry.
23 It's the entry number 159.

24 THE COURT: Thank you.

25 DR. YIN: And the first -- and the policy is, "In

1 deference to those among us who hold that it is biblically
2 wrong for women to teach men in spiritual matters, women are
3 not assigned to teach required courses in Bible or theology."

4 And CIU admits both male and female students, and I teach
5 both male and females. All the courses I was assigned to
6 teach are all the EDU courses and LNG courses. And these are
7 all in all these documents dump. (Inaudible.) And my course
8 is located in the disciplinary field in education. And in
9 that alone, I'm a woman. So according to this policy, it's
10 biblically wrong for a woman to teach men in spiritual matter.
11 How can it be possible for me to be a minister?

12 And second, in this very policy, graduate faculty
13 credentials, faculty member's credential has been specified.
14 The policy said, "Resident, adjunct and visiting faculties are
15 expected to hold a Ph.D., Th.D., Ed.D. or similar degree in
16 their disciplinary field from an accredited institution."

17 I do not hold any degrees in Bible, in theology, in
18 ministry, in divinity. My degree is in college education and
19 curriculum and instruction.

20 So according to this policy, I do not meet two
21 requirements in order to function as a minister at CIU.
22 Number one, I must be a man, and number two, I must have met
23 all the requirements for the faculty credential. And I failed
24 to meet both standards. I'm a woman. I do not have that
25 degree.

1 And third, in this very same guide, Your Honor, I would
2 like to point out only six times of the word ministers are
3 located. And the only one time has been used as a noun, which
4 is located in the policy related to the seminary -- to the
5 school of seminary and mission. The policy about training
6 Christian ministers.

7 So according to its own definition, Christian ministers
8 need to be trained.

9 So claiming me, I have no Bible degree, no theology
10 background, no divinity degree, no ministry skills, it's just
11 like they are telling the whole world, and if I could be a
12 minister, the seminary needs to be closed down. Ministers do
13 not need to be trained.

14 So the rest, the five times, we met five times, I used the
15 adverbs. And none of the five times used in the situation and
16 the regarding the function of a minister. And nowhere in this
17 handbook, nowhere in this handbook referring, and the faculty
18 members serving as the ministers or functioning as a minister,
19 nor the word is a minister gospel has ever been located in
20 this whole handbook. And they also have the whole faculty
21 search recruitment procedure attached.

22 So next I would say that they are using the First
23 Amendment to talking about religious liberty. Your Honor,
24 practicing my belief on a Christian campus is my religious
25 liberty. I do pray, I did pray before the class. I asked God

1 to give my students wisdom, to give myself wisdom to teach and
2 to learn the content. And like all the other sessions run by
3 the politicians, even down the street at the Hill, the State
4 building, when they discuss a bill, before that, they pray.
5 They pray. And I never led any religious -- and I never led
6 any religious services as they claimed. And it is a total
7 lie. And because CIU has created guidelines, and if you look
8 at the website you can find the chapel schedule. They laid
9 out who will speak, and in a pod service over, the pod cast
10 and the listening recording over there.

11 So I was not a minister. And my job -- and my job is to
12 train the students to be teaching English. And for the book,
13 they talk about a Christian theology, probably some of my
14 students read that book. It's not about theology, it's about
15 the professionalism of being an English language teacher.
16 You, as a Christian. Because the author observed there are a
17 lot of English language teachers out there overseas using the
18 white privilege. And then they just say I'm a native English
19 speakers, but without any professionalism.

20 So that book just explains being a Christian, we got to be
21 a good ambassador of Christ through our professionalism of
22 teaching English effectively and being a good testament
23 through our profession. It's like, Your Honor, I would like
24 you to see when you walk around, drive around the Columbia,
25 you're going to see all these billboard everywhere in

1 Columbia, CIU is recruiting students for the business major.
2 Business leadership major. Even at the airport we just came
3 out of, it's business leadership major. It's not theology
4 major.

5 So in this case, and is CIU conflating the case to confuse
6 it. And they become patronize all the meanings, all the
7 words. And, for example, they use the program evaluation.
8 The program evaluation is a general university serving of
9 students' overall experiences of the program, of the many
10 experiences during the -- during the program time. And they
11 used that as the argument.

12 And the one fact I would like you to point to the judge to
13 see is that in this document -- and yes, they said
14 evangelism -- but for the whole program, I only taught four
15 courses. And also, in the same document and the one item they
16 did in the report is talking about ministry skills. And in
17 that -- on that survey, ministry skills has been marked as not
18 applicable. Not applicable for that program.

19 So it's the same document -- let me find out -- is my
20 Exhibit 34, I believe. I do not know the entry number. Is my
21 Exhibit 33. Here, ministry skills not applicable.

22 THE COURT: And you're referring to your affidavit at
23 paragraph 33?

24 DR. YIN: Yes, it's my responses in opposition to
25 their summary judgment.

1 THE COURT: Okay.

2 DR. YIN: Is this one.

3 THE COURT: At page 33 of your opposition memorandum?

4 DR. YIN: Yeah, yeah, yeah. Thank you. Sorry,
5 I'm -- So as for the leadership, they said they hire me as a
6 leader, the director of the TESOL program. Your Honor, this
7 is a fact. And the CIU runs the program is the one-man band.
8 As the former CIU employees sitting out here, they can
9 testify, if you need, but I know it's not for that.

10 THE COURT: Not today.

11 DR. YIN: Yes, not for today. And then it's for
12 one-man band, that because there's only one full-time
13 professor in that program, so you are the director. All the
14 professors are cross-teaching each other's programs.

15 So in the faculty evaluation they talk about -- it's in my
16 Exhibit 46 -- 46 or 42 is my own exhibit. And it talking
17 about like leadership skill and that they mark it not
18 applicable.

19 They said they hired me as a leader, but they never
20 evaluated me as a leader. They hired me as a minister, but
21 they never evaluated me as a minister. And I never knew such
22 things existed.

23 Another thing I want to make clear, Your Honor, is CIU's
24 policy. CIU has the policy to acknowledge. CIU doesn't have
25 the policy to acknowledge the employees are functioning as a

1 minister on behalf of a church. The requirement is that he
2 must be an ordained minister, employed by a church as the
3 first assignment. His church must have agreement with CIU
4 that he's sent by his church to further the church mission at
5 CIU.

6 The reason I use "he" is because CIU never acknowledge --
7 never acknowledging women to be able to function as a
8 minister, they only acknowledge men. CIU has been withholding
9 this document for two years. This very document that
10 demonstrating this policy. Although they do acknowledge that
11 exists. Because CIU is not a church, but a teaching
12 institution. CIU itself can not appoint any employees to be
13 ministers, can not ordain any employees to be the minister.

14 THE COURT: Let me stop you there and ask you, Dr.
15 Yin. Because under Hosanna-Tabor, doesn't that case stand for
16 the principle that the ministerial exception that is what
17 we're talking about today, is broader than the, I guess,
18 formal definition and understanding of what a church minister
19 or formally ordained minister would be?

20 DR. YIN: Yes. Yes. Yes. And but if they argue
21 they have ministers, they do, but they have to be the church
22 appointment. They have the church appointment.

23 THE COURT: So you do not acknowledge that the
24 ministerial exception can apply to employees who are not
25 formal ordained ministers?

1 DR. YIN: No, I'm not implying that. I'm not
2 implying that. Because they -- Do they have any ministers?
3 They do, because they are men. But they hold the ministers'
4 position outside the campus. They further the church mission.
5 So they are sent by the church to CIU to do the mission.

6 Like one of the testimonies enrolled by a former CIU
7 seminary student, and he testified, and it's in the pile of
8 my -- in a pile of the exhibits I gave to the Court. And she
9 said -- he said here, "Having been a seminary student at CIU
10 from 2007 graduating in 2011, I am aware of CIU's conservative
11 biblical view not allowing women to teach Bible or theology.
12 Further, it's my understanding there are no women who are
13 employed at CIU who are otherwise pastoring a church or hold a
14 position over men. I'm aware of other men who are pastoring
15 while holding a faculty position at CIU."

16 So if we're back to this case, Hosanna-Tabor case, and
17 talking about now ordained minister, and it is now ordained
18 minister, I do not meet any of those requirements the Supreme
19 Court has set. And I do not have any training, I do not claim
20 that tax exemption, because I didn't even know such thing
21 existing. I was not a minister. I do not pass any of the
22 oral examination. And the university is not constituted as a
23 church. But according to the argument, the whole reason they
24 apply the ministry, the whole reason they apply this ministry
25 application to this case, it is because they argued the

1 lawsuit was barred by ministerial exception, which is the
2 First Amendment doctrine that precludes claims brought by
3 ministers of a church.

4 So CIU is not -- is not a church. And if CIU also
5 receives federal funding Title IV. And as they said, they do
6 not want the government to enter into -- entangle the CIU's
7 affairs, but they do receive the federal funding. And their
8 information also registered with the Federal Government Title
9 II.

10 And if they really do not want the Government to
11 interfere, that information should not be located in any of
12 the U.S. departmental websites.

13 THE COURT: All right. Thank you, Dr. Yin.

14 DR. YIN: Thank you very much.

15 THE COURT: Let me ask you, if you can kind of
16 recapitulate for me, I want to see if I can get you to focus
17 on maybe the five most important documents, and you've talked
18 a lot about them, but I want to try to identify where those
19 are in the record.

20 DR. YIN: Yeah, yeah.

21 THE COURT: Because Mr. Blomberg did the same thing
22 in his presentation and directed the Court to the documents
23 that he thinks support his position. So I'd like you to see
24 if you can list the best five that support your position for
25 me. I'll try to help you a little bit, to save some time, I

1 know you talked about your evaluations?

2 DR. YIN: Yes.

3 THE COURT: Your faculty evaluations?

4 DR. YIN: Yeah.

5 THE COURT: Can you maybe tell me where those are in
6 the record?

7 DR. YIN: It's my limited discovery Exhibit 46. It's
8 my -- in opposition to the defendant's summary judgment. And
9 in this exhibits I think it just now I forgot to cover it, and
10 it's clearly laid out on page four, it's general performance
11 and corporate culture factors. For the section of general
12 performance part, CIU evaluated my academic work performance.

13 THE COURT: Okay.

14 DR. YIN: And then the corporate cultural factors,
15 and they evaluate the Christian lifestyle part, such as
16 agreement with CIU values. So this document clearly proves
17 that I was a teaching faculty, a teaching faculty who is a
18 practicing Christian, and it is -- that is required. So this
19 is the evaluation.

20 And also, I have the recruitment letter.

21 THE COURT: Okay. That will be the second one.

22 DR. YIN: Yes. The second one, the recruitment
23 letter is in the docket record number four.

24 THE COURT: And that's the letter from Dr. Uecker
25 that you were referencing before, correct?

1 DR. YIN: Yes, before I was -- before I was -- before
2 I was hired. And the original envelope is here dated
3 March 5th, 2008.

4 THE COURT: All right. And then I know you also
5 talked a lot about and held up the handbook.

6 DR. YIN: Yes. This one, you can have this one.

7 THE COURT: I know it's in the record somewhere, I'm
8 just trying to make sure I know where to go and find it,
9 because there are a lot of documents in this record, so I'm
10 just trying to get you to help me identify the most importance
11 ones.

12 DR. YIN: Okay.

13 THE COURT: And I think we already figured out the
14 ECF number on that one, so I have that on my list.

15 DR. YIN: Yes, thank you, um-hum.

16 THE COURT: And so I have the faculty evaluations,
17 recruitment letter, the handbook, and tell me two more of the
18 documents you think are the most important that support your
19 position.

20 DR. YIN: Okay. It is the CIU's CIP code. The
21 program's CIP code. C-I-P code.

22 THE COURT: Oh, okay.

23 DR. YIN: The CIP code is the --

24 THE COURT: This is the program code that CIU used
25 to --

1 DR. YIN: Report.

2 THE COURT: -- the Commission on Higher Education
3 about the course that you were teaching.

4 DR. YIN: Yes, about the program I'm serving. And
5 also, it is the same program, and for any academic institution
6 accredit, if they want to get a program approval from the
7 accreditation agency, they have to use this CIP code, it's
8 called a classified instructional programs, and it's uniformed
9 across the country in America.

10 THE COURT: All right. Any other documents?

11 DR. YIN: It's here, I know it's here, it's limited
12 discovery Exhibit No. 11. The CIP code is 131401.

13 THE COURT: All right.

14 DR. YIN: And I have to lean, because the website
15 over there. And if, Your Honor, you are interested in that,
16 you can also Google, you can also type in this number, 39 --

17 THE COURT: Well, I'm not allowed to go and look
18 outside what's in the record to make a decision on the motion.
19 I have to confine myself to what's already in the record.

20 DR. YIN: Okay. So another argument, I put it here,
21 is the CIP code of 39, that's for all the theology, for the
22 Bible, for the biblical study, is totally two different
23 fields.

24 THE COURT: Any other documents that you want to make
25 sure that I consider when I am weighing your argument?

1 DR. YIN: Okay. And another document is the
2 Department of Education registration, and it is Exhibit 2.
3 Limited discovery Exhibit 2.

4 THE COURT: Okay.

5 DR. YIN: And this one identifies CIU's nature of
6 school is nonprofit, but CIU's lawyer also said CIU has
7 proprietary interests. So as a school, you can not be both,
8 either nonprofit or proprietary. And that is -- it's in the
9 system.

10 THE COURT: I can find it.

11 DR. YIN: You can find it? No, I just want to direct
12 you so you don't spend time. It's this one is the entry
13 number 68.

14 THE COURT: Thank you.

15 DR. YIN: Page two.

16 THE COURT: Thank you very much, Dr. Yin.

17 DR. YIN: Can I have one more story? Sorry, Your
18 Honor, can I have one more document?

19 THE COURT: One more document. Okay.

20 DR. YIN: One more document is College of Education
21 Assessment Plan. And for the TEFL program. And it is
22 learning outcome of the students. You will see that it has
23 nothing to do with the spiritual matter. That is -- it's 9,
24 it is limited Exhibit 9. And this is also a document that
25 they released, the college education.

1 THE COURT: Okay. Thank you very much, Dr. Yin, and
2 also to defense counsel, it's been very helpful. I will take
3 everything and consider it very carefully and issue a report
4 and recommendation, all the cross-motions for summary
5 judgment, just as soon as possible.

6 Thank you all very much. I hope y'all have a great rest
7 of your day.

8 DR. YIN: Thank you so much, Your Honor.

9
10 (Court adjourned at 10:59 a.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR